



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 31, 1998

Ms. Frances Johnson
City Secretary
City of Blue Mound
301 Blue Mound Road
Blue Mound, Texas 76131

OR98-2075

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117782.

The City of Blue Mound (the "city") received a request for information relating to a search conducted at 1724 Glenn Drive and for information about the city's enforcement of animal control ordinances. You indicate that the city has released all available responsive information to the requestor, with the exception of an audiotape made during the search at 1724 Glenn Drive. You raise the issue of whether the audiotape is subject to the Open Records Act. You also claim that the audiotape is excepted from disclosure under sections 552.108 and 552.111 of the Government Code.

A letter from the Blue Mound Police Department (the "department") states that the requested audiotape is the personal property of a police officer who participated in the search, and that police officers make such tapes for their own benefit to protect themselves against complaints or lawsuits. These statements raise the issue of whether the audiotape is subject to the Open Records Act.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The chief of police indicates that the requested tape was privately purchased by the police officer who made the tape. However, the source of the funds used to purchase the tape is but one of several factors to be considered in determining whether the tape is subject to the Open Records Act. *See* Open Records Decision No. 635 (1995). Furthermore, records that relate

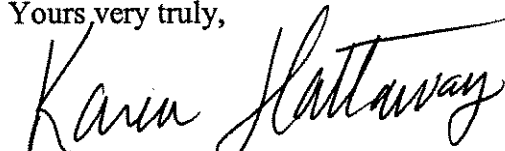
to official business are public records subject to the Open Records Act regardless of whether an individual member of a governmental body or the custodian of records holds the records. *See id.* It is apparent from the submitted correspondence that police officers who work for the city routinely make tapes in connection with their official duty of executing search warrants. It is likely that the department would use tapes with evidentiary value in its investigation of criminal cases. For these reasons, we find that the requested tape is information collected and maintained by the department in connection with the transaction of its official business. Thus, the tape is subject to release under the Open Records Act.

You claim that the tape is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. However, you did not timely raise these exceptions to disclosure. Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Your letter to this office states that the request for information was made on May 10, 1998. You have not indicated the date on which the city in fact received the request for information. However, the city did not request a decision from this office until June 12, 1998, presumably more than ten business days after the city received the request. Therefore, unless the tape is confidential by law or other compelling reasons exist as to why the tape should not be made public, you must release the tape to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 117782

cc: Ms. Robin Gober
1724 Glenn Drive
Fort Worth, Texas 76131